

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REY REY PRODUCE SFO, INC, NO C 08-1518 VRW

Plaintiff,

PRELIMINARY INJUNCTION

v

MIS AMIGOS MEAT MARKET, INC,
URIEL GONZALEZ and
ALEJANDRO COSTA,

Defendants.

The court having granted plaintiff's motion for a preliminary injunction, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants MIS AMIGOS MEAT MARKET, INC and URIEL GONZALEZ, be and hereby are preliminarily enjoined during the pendency of this action, pursuant to Rule 65 of the Federal Rules of Civil Procedure, from engaging in, committing, or performing directly and indirectly, any and all of the following acts:

- (1) Removing, withdrawing, transferring, assigning or selling to any other person or entity, the proceeds from the sales of any or all existing or future inventories of food or other

1 products derived from perishable agricultural commodities
2 and/or receipts of payment for such commodities or crops sold
3 prior to the date of this order and/or otherwise disposing of
4 assets, books or funds;

- 5 (2) Taking any other action whatsoever which causes, has the
6 effect of causing, or which otherwise dissipates Plaintiff's
7 beneficiary interests in the trust assets;
8 (3) Taking any other action whatsoever which violates 7 USC
9 § 499e(c)(1) through (4), inclusive, and 7 USC § 499b(4) [§ 2
10 of Perishable Agricultural Commodities Act ("PACA")].

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12 IT IS FURTHER ORDERED that defendants, their officers,
13 directors, agents, subsidiaries, successors, assignees, principals,
14 assignors, attorneys and persons acting in concert with them, shall
15 within 24 hours after being served with this Preliminary Injunction
16 not fail to distribute PACA Trust assets in the amount of at least
17 \$102,341.62 which includes \$88,753.30, the cumulative amount of the
18 PACA Trust principal owing to Plaintiffs plus \$5,585.67 in finance
19 charges through April 24, 2008, calculated at the agreed-upon rate
20 of 1-1/2% per month plus \$7,210.00 as reasonable attorneys' fees as
21 well as costs of \$792.65.

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23 IT IS FURTHER ORDERED that during the pendency of this
24 action, defendants, their agents, subsidiaries, successors,
25 assignees, principals, attorneys, and persons acting in concert
26 with them shall be and hereby are prevented from transferring,
27 withdrawing or in any other manner removing Perishable Agricultural
28 Commodities Act [7 USC § 499e et seq] trust assets, including funds

1 on deposit in banking accounts held by or on behalf of defendants,
2 from defendants' banking accounts, including but not limited to
3 defendants' account(s) located at Bank of the West, account number
4 183151240, or any other subsequently discovered banking account
5 standing in one or more of Defendants' names.

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7 IT IS FURTHER ORDERED that in the event defendants lack
8 sufficient funds promptly to deposit the sums described above,
9 defendants shall be and hereby are required and ordered immediately
10 to:

- 11 (1) Account to plaintiff for all assets of the PACA trust from
12 commencement of defendants' business through the date of this
13 Preliminary Injunction.
- 14 (2) Assign defendants' inventory of perishable agricultural
15 commodities and produce related receivables to plaintiff for
16 collection until plaintiff is fully paid, and deposit and/or
17 deliver complete accounts, records, and information of all of
18 said receivables to plaintiff's counsel without charge to the
19 trust, and subject to plaintiff's counsel making a weekly
20 accounting for all receivables received or collected by
21 plaintiff's counsel in that regard. Plaintiff's counsel shall
22 act as trustee in connection with its duties of collection of
23 the accounts receivable and shall deposit any cash assets of
24 the trust which are collected under this order in a trust
25 account. In plaintiff's sole discretion, to the extent
26 necessary to prevent loss of defendants' inventory of
27 perishable agricultural commodities through decay,
28 over-ripening, spoliation or improper storage or handling;

1 plaintiff may immediately take possession of any such
2 inventory and sell such inventory through a PACA licensed
3 broker. The proceeds of any such sales shall be held in trust
4 by plaintiffs' counsel pending further order of this court.
5 Any broker retained by plaintiff or plaintiff's counsel to
6 effectuate such sales may retain a brokerage commission in an
7 amount reasonable and customary in the produce industry.

- 8 (3) Endorse any checks made, endorsed or paid, to defendants which
9 are trust assets and which are in their possession or
10 obtainable by defendants at the time of the entry of this
11 Preliminary Injunction, or which defendants obtain or which
12 become obtainable by defendants after the entry of this
13 Preliminary Injunction, including but not limited to checks
14 representing payment for sales of growing crops, and shall
15 deliver said assets within 48 hours of defendants' receipt of
16 them to plaintiff's counsel as set forth above. Likewise,
17 defendants shall deliver any cash assets of the PACA trust
18 which are in its possession or are obtainable by defendants at
19 the time of the entry of this order, or which defendants
20 obtain or which become obtainable by defendants after entry of
21 this Preliminary Injunction, within 48 hours of defendants'
22 receipt of them to plaintiff's counsel.
- 23 (4) On or before May 23, 2008, file with this court satisfactory
24 evidence of compliance with the terms of this Preliminary
25 Injunction.

27 IT IS FURTHER ORDERED that during the pendency of this
28 action, and continuing thereafter, plaintiff and their counsel,

1 agents, or representatives, shall have full and complete and
2 continuing access to all of defendants' books and records, which
3 shall include but not necessarily be limited to, defendants'
4 accounts receivable and payable ledgers, invoices, ledgers,
5 computer runs, bank statements and canceled checks, relating to
6 defendants' business and personal financial status from
7 commencement of defendants' business activities forward for the
8 purpose of verifying defendants' accountings required by this
9 Preliminary Injunction and for enforcement of this Preliminary
10 Injunction. Defendants shall, upon two business days notice by
11 plaintiff's counsel, allow inspection and copying of the books and
12 records of said defendants by plaintiff or their representatives at
13 defendants' place of business.

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15 IT IS FURTHER ORDERED that during the pendency of this
16 action, plaintiff shall be entitled to depose, under oath, at
17 reasonable times and places, upon at least two business days
18 notice, defendants and/or defendants' other principals, owners,
19 directors, officers, shareholders, employees, agents and
20 accountants concerning any matter pertaining to any accounting due
21 pursuant to this Preliminary Injunction, any books which plaintiff
22 is entitled to inspect under this Preliminary Injunction, the trust
23 assets or any of defendants' assets, and/or defendants' business
24 practices, procedures or operations from commencement of
25 defendants' business activities.

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1 **IT IS FURTHER ORDERED** that this Preliminary Injunction
2 shall be effectively immediately upon plaintiff's posting of a bond
3 with the clerk of this court in the amount of \$1,000.00.

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5 Plaintiff shall forthwith serve MAMM, its resident agent
6 or counsel with a copy of this Preliminary Injunction.

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9 **IT IS SO ORDERED.**

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13 **VAUGHN R WALKER**

14 United States District Chief Judge

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